

February 5, 2009

The Honorable Bruce C. Ennis
State Senator
Legislative Hall
P.O. Box 1401
Dover, DE 19903

Re: Delaware State Fire School Records

Dear Senator Ennis:

You have asked for an Attorney General's opinion as to whether the training records for courses taken at the Delaware State Fire School are public records subject to disclosure under the Freedom of Information Act (FOIA), 29 *Del. C.* ch. 100. We have viewed an example of the records in question, which consists of a list of the courses the participant took at the Delaware State Fire School, showing the number of hours taken out of the number of hours available for each course. You have stated that the records are maintained by the State Fire School and "posted to each firefighter's company file," which suggests that the records might be personnel or pupil records that are exempt from public disclosure. However, our conclusion is that the Delaware State Fire School training records are public records to which the public has a right of access.

The State Fire School is a public body subject to FOIA because it is established by the General Assembly, pursuant to 16 *Del. C.* § 6613, and is supported by public funds. 29 *Del. C.* § 10002(c). Public records are "information of any kind . . . compiled or collected by a public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes [.]" 29 *Del. C.* § 10002(g). The State Fire School records meet that definition, and therefore are to be made available to the public unless they are exempted under one of the exceptions listed in paragraphs (1) through (17) of 29 *Del. C.* § 10002(g). One of the enumerated exemptions is for "any personnel . . . or pupil file, the disclosure of which would constitute an invasion of personal privacy[.]" 29 *Del. C.* § 10002(g)(1).

We do not need to decide whether the records are part of a personnel or pupil file because we find that it is clear that there is nothing in the records which could arguably result in an invasion of personal privacy. The relevant definition of invasion of privacy in Delaware is, "the publicizing of one's affairs *with which the public has no legitimate concern* or the wrongful intrusion into one's private activities in such manner as to

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outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibility.” *Reardon v. News-Journal Co.*, 164 A.2d 263, 266 (Del. 1960) (emphasis added). And, the FOIA exceptions to public disclosure must be interpreted narrowly, not expansively, in order to comply with the General Assembly’s directive to construe FOIA so that the public has “easy access to public records” and to “further the accountability of government[.]” 29 *Del. C.* § 10001; *American Civil Liberties Union of Del. v. Danberg*, 2007 WL 901592 (Del. Super.).

By enacting FOIA, the General Assembly has determined that the public has a legitimate concern in public records. Therefore it cannot be said that the public has no legitimate concern in the State Fire School records. Neither can it be said that revealing a firefighter’s State Fire School record is a matter of outrage or would cause suffering, shame or humiliation to the ordinary person. Therefore, these records are not exempt from public disclosure. However, as there is no legitimate public interest in personal information such as home addresses and social security numbers, they may be redacted before the records are released.

Respectfully,

Lawrence W. Lewis
State Solicitor

cc: The Honorable F. Gary Simpson
The Honorable William J. Carson
The Honorable John L. Mitchell, Jr.
The Honorable Clifford G. Lee
The Honorable William R. Outten
The Honorable Daniel B. Short